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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,376	11/26/2003	Alan D. Olin	70494.6 (M-16842-4P US)	8032
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Haynes and Boone, LLP IP Section 2323 Victory Avenue SUITE 700 Dallas, TX 75219			EXAMINER PASCUA, JES F	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 08/03/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/723,376	<b>Applicant(s)</b> OLIN ET AL.	
	<b>Examiner</b> Jes F. Pascua	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-13,15-24,32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) 3,5-9,11,12,15,17-21,23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,10,13,16,22,32 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/10/2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, 10, 13, 16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,687,848 to Scholz et al., U.S. Patent No. 6,007,246 to Kinigakis et al. and U.S. Patent No. 3,387,701 to Schneider et al..

Fig. 14 of Scholz et al. discloses a bag comprising a top end heat seal (right-hand side of the bag), a gusseted, bottom end (left-hand side of the bag), opposing first and second non-gusseted side edges (top and bottom sides of the bag) extending between the top and bottom ends and an opening located on the first side edge,

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proximate to the top end and closer to the top end than to the bottom end. The extended portion of the first side edge in Scholz et al. renders the entire length of the first side edge greater than the length of the bottom end. Scholz et al. discloses the opening is made reclosable by magnetic fastener. Scholz et al. also discloses the reclosable, magnetic fastener may be provided with complementary, interlocking profiles (see column, 8, lines 36-39) or the reclosable fastener may be interlocking strips (see column 13, lines 66-67 through column 14, lines 1-3). The complementary, interlocking profiles or interlocking strips of Scholz et al. meet the recitation "having a reclosable fastener that is at least one of zipper or a slider" to the same degree as claimed. However, Scholz et al. does not disclose the gusseted, bottom end being generally ovoid in shape. Kinigakis et al. teaches that it is known in the art to provide a gusseted, bottom end that is generally ovoid in shape. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the gusseted, bottom end of Scholz et al. with the generally ovoid shape of Kinigakis et al., in order to enable the bag to be self-supporting in an upright position.

Furthermore, Scholz et al. disclose the claimed device, as discussed above, except for the top end and the first side edge having an included angle measuring less than 90 degrees. Schneider et al. discloses that it is known in the art to provide an included angle measuring less than 90 degrees between the top end and first side edge of another dispensing bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the top end and first side edge of Scholz et al. with an included angle measuring less than 90 degrees, as in Schneider et

al., in order to facilitate dispensing contents from within the bag. As a note, providing the top end and first side edge of Scholz et al. with an included angle measuring less than 90 degrees would inherently result in the top end and the reclosable fastener of the first side edge having an included angle less than 90 degrees.

Regarding claims 10 and 22, the angled seal extending beyond the first side edge in Fig. 14 of Scholz et al. meets the recitation “the bag further includes a sealed portion proximate to the top end” to the same degree the claim sets forth the metes and bounds of the term “proximate”.

4. Claims 13, 16 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,007,246 to Kinigakis et al. and Schneider et al.

Kinigakis et al. discloses a reclosable bag, comprising: a standup bag configured to store material, the bag having a top end (28) having a heat seal and a bottom end (20) having a generally ovoid shape, a first side edge (26, 30) that is substantially perpendicular to the bottom end and a second side edge each extending between the top and bottom ends and opposite each other. Kinigakis further shows the entire length of the first side edge being greater than the length of the bottom end. Kinigakis further discloses a pour spout (24); wherein the first side edge (26, 30) has a non-gusseted portion, the non-gusseted portion located proximate to the top end; wherein the pour spout has a reclosable fastener (34) having at least one of a zipper or a slider and having sealed first and second ends, the pour spout and the reclosable fastener located along the non-gusseted portion of the first side edge and oriented substantially parallel

to the first side edge portion (26); wherein the reclosable fastener is located closer to the top end than to the bottom end; and wherein the bag is configured to rest upon the bottom end. Kinigakis et al. further discloses accessing the reclosable fastener by tearing an outer portion of the bag along a line of weakening (see column 8, lines 22-29), which meets the recitation "a tear strip proximate to the reclosable fastener."

However, Kinigakis et al. does not disclose the top end and the first side edge having an included angle measuring less than 90 degrees. Schneider et al. discloses that it is known in the art to provide an included angle measuring less than 90 degrees between the top end and first side edge of another dispensing bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the top end and first side edge of Kinigakis et al. with an included angle measuring less than 90 degrees, as in Schneider et al., in order to facilitate dispensing contents from within the bag. As a note, providing the top end and first side edge of Kinigakis et al. with an included angle measuring less than 90 degrees would inherently result in the top end and the reclosable fastener of the first side edge having an included angle less than 90 degrees.

5. Claims 1, 4, 13, 16, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,941,643 to Linkiewicz, Kinigakis et al. and Schneider et al.

Fig. 3 of Linkiewicz discloses a reclosable bag comprising a top end (left-hand side of the bag), a gusseted, bottom end (right-hand side of the bag), first and second

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side edges (top and bottom ends of the bag) and a pour spout. The first side edge (top end of the bag) has a non-gusseted portion located proximate the to the top end and substantially perpendicular to the bottom end. The pour spout has a reclosable fastener having at least one of a zipper or a slider and located along the non-gusseted portion of the first side edge and oriented parallel to the first side edge. The reclosable fastener has sealed first and second ends and an opening therebetween the sealed ends and the opening are located along the non-gusseted portion of the first side edge. The reclosable fastener is located closer to the top end than to the bottom end. Linkiewicz further discloses accessing the reclosable fastener by tearing an outer portion of the bag along a line of weakening. However, Linkiewicz does not disclose the gusseted, bottom end being generally ovoid in shape. It would have been an obvious matter of design choice to make the bottom end of Linkiewicz generally ovoid in shape or whatever shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. Applicant's remarks, filed 07/10/2009, fail to address the Examiner's statement of obvious design choice. Therefore, the Examiner's statement that it would have been an obvious matter of design choice to make the bottom end of Linkiewicz generally ovoid in shape or whatever shape was desired or expedient is taken as admitted prior art. See MPEP 2144.03. Alternatively, Kinigakis et al. teaches that it is known in the art to provide a gusseted, bottom end that is generally ovoid in shape. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the gusseted, bottom end of Linkiewicz with the

generally ovoid shape of Kinigakis et al., in order to enable the bag to be self-supporting in an upright position.

Furthermore, Linkiewicz discloses the invention, as discussed above, except for the first side edge having a length greater than a length of the bottom end. It would have been an obvious matter of design choice to increase the length of the first side edge of Linkiewicz such that it would be greater than the length of the bottom end, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

As a note, the bag of Linkiewicz meets the recitation “standup bag” to the same degree as claimed. The gusseted, bottom end of the Linkiewicz bag renders it capable of assuming a vertical or upright position.

Moreover, Linkiewicz discloses the claimed bag, as discussed above, except for the top end having a fold instead of a heat seal. Kinigakis et al. teaches that it is known in the art that the end of a bag adjacent a reclosable fastener may either be a fold (Fig. 9 of Kinigakis et al.) or a heat seal (86, 94, 104 of Kinigakis et al.) It would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the fold of Linkiewicz with one of the heat seals of Kinigakis et al., since Kinigakis et al. shows folded ends and heat sealed ends to be structural equivalents.

Linkiewicz and Kinigakis et al. disclose the claimed device, as discussed above, except for the top end and the first side edge having an included angle measuring less than 90 degrees. Schneider et al. discloses that it is known in the art to provide an



included angle measuring less than 90 degrees between the top end and first side edge of another dispensing bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the top end and first side edge of Linkiewicz with an included angle measuring less than 90 degrees, as in Schneider et al., in order to facilitate dispensing contents from within the bag. As a note, providing the top end and first side edge of Linkiewicz with an included angle measuring less than 90 degrees would inherently result in the top end and the reclosable fastener of the first side edge having an included angle less than 90 degrees.

### ***Response to Arguments***

6. Applicant's arguments, filed 07/10/2009, regarding the rejection of claims 1, 4, 10, 13, 16 and 22 under 35 USC 103(a) as being unpatentable over Scholz et al. and Schneider et al. have been fully considered but they are not persuasive. Applicant's remark that Scholz et al. "discloses interlocking magnetic strips, which are different from a zipper-type fastener. One of ordinary skill in this art does not consider interlocking magnetic strips to be a zipper-type fastener." is opinion and unsupported by any evidence. Applicant's specification fails to set forth any structure for the claimed "zipper or slider" to distinguish the claims from the complementary, interlocking profiles disclosed in Scholz et al. The Examiner maintains that the complementary, interlocking profiles or strips of Scholz et al. (discussed in column, 8, lines 36-39 and column 13, lines 66-67 through column 14, lines 1-3) meet the recitation "having a reclosable

fastener that is at least one of zipper or a slider" to the degree applicant's specification sets forth the metes and bounds of a zipper or slider.

The Examiner disagrees with applicant's statements that Scholz et al. does not disclose fasteners having both ends along the same side of the bag and the reclosable fastener located along the non-gusseted portion of the first side edge wherein the reclosable fastener has sealed first and second ends and an opening therebetween, the sealed ends and the opening located along the non-gusseted portion of the first side edge. Figs. 3-6 of Scholz et al. clearly show the reclosable fastener having sealed first and second ends and an opening therebetween. Furthermore, Fig. 14 of Scholz et al. clearly shows both ends and opening of the reclosable fastener along the same side of the bag with the reclosable fastener located along, and parallel to, the non-gusseted portion of the first side edge. Applicant's narrow interpretation of the term "along" fails to structurally distinguish applicant's claims from Scholz et al.

Applicant further argues that Scholz et al. cannot be the basis for any proper rejection under 35 USC 103(a) because, in applicant's opinion, Scholz et al. "explicitly teaches against use of zipper-type fasteners". Applicant's arguments do not consider the full disclosure of the Scholz et al. reference. Although Scholz et al. may disclose that zipper-type fasteners, *by themselves*, are undesirable for use in the disclosed bag, Scholz et al. **also** discloses that zipper-type fasteners (i.e., complementary, interlocking profiles) may be provided with the magnetic strips of the reclosable fastener in order to "provide additional sealing ability". See column 8, lines 36-39.

7. Applicant's arguments with respect to the rejection of claims 13, 16 and 22 under 35 USC 103(a) as being unpatentable over Kinigakis et al. and Schneider et al. have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's arguments with respect to the rejection of claims 1, 4, 13, 16, 32 and 33 under 35 USC 103(a) as being unpatentable over Linkiewicz Kinigakis et al. and Schneider et al. have been considered but are moot in view of the new ground(s) of rejection.

9. Regarding applicant's comment that they "are not required to assert every possible argument in every response", applicant is duly reminded that **a complete response must satisfy the requirements of 37 C.F. R. 1.111**, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/  
Primary Examiner, Art Unit 3782